

Glenn McClendon Trucking Co., Inc. and Truck Drivers and Helpers Local 568, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 15-RC-6673

May 4, 1981

**DECISION, ORDER, AND DIRECTION
OF SECOND ELECTION**

Pursuant to a Stipulation for Certification Upon Consent Election executed by the parties, and approved by the Acting Regional Director for Region 15 of the National Labor Relations Board on September 8, 1980, an election by secret ballot was conducted on October 10, 1980, among the employees in the stipulated unit. Upon conclusion of the balloting, the parties were furnished with a tally of ballots which showed that, of approximately 20 eligible voters, 17 cast ballots, of which 9 were for, and 8 against, the Petitioner. There were no challenged ballots. Thereafter, the Employer filed timely objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Acting Regional Director for Region 15 conducted an investigation and, on December 3, 1980, issued and duly served on the parties his Report on Objections. In his report, the Acting Regional Director recommended that the Board overrule the Employer's objections and certify the Petitioner. The Employer subsequently filed timely exceptions, with a supporting brief, to the Acting Regional Director's report.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
4. As stipulated by the parties, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees, including truckdrivers, loaders, unloaders, tireman, helpers, mechanics, servicemen, spotters, forklift operators, yardmen, shop foreman, and plant clerical employee employed by the Employer at its terminal located at Simsboro,

Louisiana; excluding watchmen and/or guards and supervisors as defined in the Act.

5. The Board has considered the Acting Regional Director's report, the Employer's exceptions and brief, and the entire record in this case, and hereby adopts the Acting Regional Director's findings and recommendations only to the extent consistent herewith.

The Employer alleges in its Objection 2 that certain eligible voters were deprived of an opportunity to vote in the election. In considering the Employer's objection, the Acting Regional Director found that three eligible truckdrivers were unable to participate in the election because the Employer had dispatched them to places distant from the polling place. The Acting Regional Director concluded that the "Employer cannot base its objections on conduct for which it is responsible." Accordingly, he recommended that the Employer's Objection 2 be overruled, citing *Versail Manufacturing, Inc., Subsidiary of Philips Industries, Inc.*, 212 NLRB 592 (1974). We find merit in the Employer's exceptions to the Acting Regional Director's recommendation for the reasons set forth below.

The Acting Regional Director's investigation revealed that the polls were open for 30 minutes, from 12:30 to 1 p.m., on Friday, October 10, 1980,¹ at the Employer's terminal in Simsboro, Louisiana. On October 9, the Employer's central dispatch office in Lafayette, Alabama, assigned unit employee Clarence Archie to deliver a load of bottles to a customer in Gulfport, Mississippi. When Archie mentioned that this trip would prevent him from voting in the election, the dispatcher responded that there was no other driver available to perform the job. Consequently, Archie made the delivery, but did not return to Simsboro until after the election.

The evidence also discloses that driver Ernest Moss left Simsboro on October 8 with a delivery destined for Corpus Christi, Texas. The dispatcher then sent Moss to pick up a load of freight in Houston, Texas. However, when Moss arrived in Houston at or about 4 p.m., on October 9, he learned that the customer's shipping department had closed for that day. The following morning, the election date, the customer notified Moss that it had made other arrangements for the shipment of its freight. Thereafter, Moss was dispatched to Longview, Texas, where he did not arrive until hours after the polls had closed.

John Statum, the third unit employee who did not vote in the election, also was working away from the Simsboro terminal during the entire time

¹ All dates herein are in 1980 unless otherwise indicated.

the election was conducted. Although he does not recall exactly where he was on the day of the election, Statum believes that he was in New Orleans, Louisiana, or en route back to the Employer's facility from New Orleans. In any event, Statum is certain that he did not arrive back in Simsboro until after the election was over.

As indicated above, Archie, Moss, and Statum were prevented from voting by the work assignments made by the Employer. As found by the Acting Regional Director, the Board ordinarily will not set aside an election based on objections raised by the party responsible for the objectionable conduct. However, it is the Board's responsibility, not that of the parties, to establish the proper procedure for the conduct of elections. An important part of the procedures established by the Board is that all eligible employees should be given an opportunity to vote.² Consequently, the Board has sustained the employer's objections where, as here, the employees were unable to vote in the election because they were away from the polling place in the normal course of their duties for the employer.³

For these reasons, we find that the Acting Regional Director's reliance on *Versail Manufacturing, supra*, is misplaced here. In *Versail Manufacturing*, the Board declined to set aside the election because the employee was prevented from voting by personal activities away from the polling place which were outside the normal scope of his employment. Furthermore, in reaching this conclusion, the Board distinguished the facts in that case from the situation in *Yerges Van Liners, Inc., supra*, which is apposite to the case here. The Board stated in *Versail* that:

² *Yerges Van Liners, Inc.*, 162 NLRB 1259 (1967); *Altman-Big Apple, Inc.*, 116 NLRB 1078, 1080 (1956).

³ See *Cal Gas Redding, Inc.*, 241 NLRB 290 (1979); *Yerges Van Liners, Inc., supra*; *Altman-Big Apple, Inc., supra*.

In our opinion, the fact that required the *Yerges* election to be set aside was that the employee was caused to miss the election by the Employer, a party to the proceeding. The same protective policy would be applicable if the petitioning union, or the Board itself, prevented an eligible employee from voting. It would be inapplicable, of course, if the crucial employee was prevented from voting by reason of sickness or some other unplanned occurrence beyond the control of the parties, the Board, or the employee.⁴

In this case, three eligible voters had no opportunity to cast ballots in the election through no fault of their own. While the Employer may have been remiss in failing to advise the Acting Regional Director of the probable need for other election arrangements, there is no evidence of bad faith, and these employees were disenfranchised by their absence from the polling place. As their votes could have affected the outcome of the election decided by just one vote, we find that the interest of employee free choice will best be served by the direction of a second election.

Accordingly, contrary to the Acting Regional Director's recommendation, we shall sustain the Employer's Objection 2, set aside the election held on October 10, 1980, and direct a second election.

ORDER

It is hereby ordered that the election previously conducted herein on October 10, 1980, be, and it hereby is, set aside.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

⁴ 212 NLRB at 593.